

AMERICAN ARBITRATION ASSOCIATION
(Hereafter "AAA")
Case No: 30 190 00847 06

United States Anti-Doping Agency)
(Hereafter "USADA"))
)
Claimant)
)
and)
)
)
Floyd Landis)
(hereafter the "Athlete"))
)
Respondent)
_____)

PROCEDURAL ORDER NO.2

Recitals

1. Procedural Order No. 1 was issued on 2 February 2007.
2. The Panel received written submissions from the parties and then heard oral argument at hearings held in Los Angeles on the 22nd & by telephone conference on the 23rd of February 2007.
3. The purpose of this Procedural Order No. 2 is to plan further the course of these proceedings. This Order No. 2 is to augment and supplement Order No. 1 and does not supplant or replace that order. Both orders govern the arbitration proceedings.
4. The Panel will be issuing an Interlocutory Award on sample testing and depositions over the following days. That award should be referenced as relating to this Order No. 2 and resolves some matters arising in Order No.1.

PROCEDURAL DIRECTIONS

Production of Documents

1. One purpose of this Order No. 2 is to set out the principles that shall govern the production of documents. The precise directions with respect to production of specific requests for documents will be communicated to the parties' counsel by e-mail letter correspondence.
2. The production of documents to support an adverse analytical finding in the arbitration process is guided initially by the Technical Document on Laboratory Documentation

Packages. That laboratory documentation package of material {the “lab pack”} is required to be produced to support an adverse analytical finding and is set out in Article 7.1 of the WADA International Standard of Laboratories (Version 3.0) effective June 2003 {“ISL”} being the applicable version in this case. Beyond that material the governing principle is that a laboratory is not required to provide any documentation not specifically included in the lab pack. The ISL provides that a laboratory is not required to produce in response to discovery requests related to an arbitration hearing *standard operating procedures, general quality management documents (e.g., ISO compliance documents) or any other documents not specifically required by the Technical Document.*

3. Specific requests for production in this case are then to be measured against the provisions of the *United States Anti-Doping Agency Protocol for Olympic Movement Testing*. Rule 8.c. provides that the *laboratory shall not be required to produce any documentation in addition to Annexes B and C unless ordered to do so by an arbitrator(s) during adjudication, in which case it shall be produced at the athlete’s expense*¹. Thus, this Panel may order additional production other than that set out in paragraph 2 of this Order. Any such directions by the Panel are to be in accordance with the principle in Rule 23 of the Supplementary procedures which provides that: *An exchange of information may occur (. . .) at the discretion of the arbitrator. Consistent with the expedited nature of arbitration, the arbitrator may direct the production of documents and other information and the identification of any witnesses to be called.* It is this specific power that can be exercised by this Panel.
4. In some cases requests for documents have been denied by USADA on the basis of privilege. The Panel requests that USADA compile a privilege log and file it with the Panel and opposing counsel by 23 March 2007.
5. During the course of the hearings on 22 & 23 of February there were several agreements reached covering the documentary discovery process. For clarity these agreements are summarized below.
 - a. A discovery response that there is no document will preclude the production of the document, along with any related testimony through a witness at the hearing.
 - b. A discovery response that there are documents that exist but they are not required to be produced because of the ISL or the other principles set out at paragraph 2 above will preclude the production of the document along with any related testimony through a witness at the hearing.
 - c. Any document used to determine the ISO certification or the WADA accreditation of the LNDD is not subject to discovery.
6. To facilitate the discovery process and to obviate any possible battle of experts on each side the Panel is to appoint their own expert. The parties are directed to attempt to agree upon an independent expert for the Panel to use by March 21st 2007. If there is no recommendation by mutual agreement then the Panel will receive suggestions by each

¹ At p. 93 of the February 22 2007 transcript the Counsel for the Respondent has indicated: “...And I actually thought we had crossed this bridge already because in our last telephonic status conference, we had agreed to pay for the discovery that would be produced in this case...”

party and will proceed to pick their own independent expert which may not necessarily be one from either party's list. This process is to be completed quickly in order that the expert can be named and in place as soon as possible. The expert will be requested by the Panel, the Parties and their experts to run various tests on the Electronic Data Files (EDF) of the LNDD. The EDFs shall always remain in control of the expert, and be returned to LNDD at the end of the present arbitration. The Parties are instructed to communicate their initial instructions to the expert, by March 26 2007 if the expert is jointly appointed, and within three (3) days of the appointment if appointed by the Panel. Thereafter, both parties' experts shall have the right to be present when the testing takes place and to provide further instructions regarding testing at that time. Any dispute between the Panel's experts and the parties, or the parties' experts, will be resolved by the Panel.

7. Confidentiality of the Arbitration

Order No. 1 directed the parties in the following respects:

“28. From the beginning of the hearing and until the rendering of the decision of the Panel, the parties and their counsels are requested not to engage in any public comment on the hearing or the arbitration procedure.”

“29 In furtherance of the foregoing decisions, the Panel orders the parties to keep all documents confidential disclosed through the process of document discovery. Documents will only become public as they are filed as exhibits at the arbitration hearing. The process of releasing such exhibits to the media will be covered in the rules to be developed by the draft order as mentioned in paragraph 20. The Panel reserves the right to not release certain exhibits if it is determined that there is good reason to keep them confidential. Such rulings will be made by the Panel at the time of admitting the document as an exhibit at the arbitration following a request to so rule by one of the parties counsel.”

In further support of the above quoted matters dealt with in Order No. 1 it is now apparent that it would be both advisable and necessary that there be some additional directions to augment and supplement those directions already found in Order No. 1. Therefore, the Panel directs that the parties' briefs, transcripts of the proceedings and procedural orders may not become public sooner than the first day of arbitration currently scheduled for 14 May 2007. Furthermore all of the foregoing confidentiality provisions are to be kept confidential by all persons who may have access to them by virtue of their consulting, agency or other relationship with the parties.

8. Publicity of the Hearing

The parties have requested time to make the arrangements surrounding the organization of the media and live television during the hearing. The parties are required to file a draft arrangement with the Panel by March 21st 2007. That draft arrangement must provide for a media consultant who will report to the Panel and take directions only from the Panel as to the broadcasting aspects of the arbitration proceeding and the general conduct of the media during the arbitration hearing. It is the exclusive prerogative of the Panel to organize the

broadcasting arrangements. The Panel has the right to terminate the live broadcasting should it become intrusive upon the hearing or for any other reason it deems appropriate.

DATED this 15th DAY of MARCH 2007.

For the Panel

IN _____

(signed) _____
 Patrice M. Brunet, Esq.
 Chairman

IN _____

(signed) _____

Prof. Richard H. McLaren, C.Arb Esq.

IN _____

(signed) _____
 Chris Campbell, Esq.